



COMMONWEALTH of VIRGINIA

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July 27, 2016

Ms. Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW, Room 3C106
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

Thank you for the opportunity to comment on the proposed regulations on accountability and state plan requirements under the *Every Student Succeeds Act of 2015* (ESSA).

When ESSA was signed into law, Virginia applauded the bipartisan measure that reauthorized the *No Child Left Behind Act of 2001* (NCLB) and established an expiration date for the flexibility waivers under which the majority of states have been operating. The law's intent to restore autonomy to states over key accountability tenets provides welcome relief from the prescriptive requirements and sanctions of both NCLB and Flexibility. The opportunity offered by ESSA—to design and implement state plans for accountability that are tailored to each state's unique context—comes at an ideal time in Virginia, as our state Board of Education develops a new vision for the commonwealth's public schools that focuses on continuous improvement for all schools and on aligning student outcomes with the expectations of higher education and employers from all sectors.

A number of the proposed rules clarify elements in the statute that are vague, which is helpful to states as they develop ESSA implementation plans. Other proposed rules seem to continue some of the rigid components under which states are currently operating and go beyond the implied and expressly written intent of ESSA. The regulations that are of greatest concern to Virginia are those that conflict with the state's vision for continuous improvement and that may cause misalignment between our state's educational goals and federal mandates that are not supported by ESSA. Revisions to these regulations will allow Virginia and other states to design and implement federal accountability systems that will result in improved outcomes for students,

Ms. Meredith Miller
July 27, 2016
Page Two

families, and communities, while still complying with the provisions of the law. Permit me to provide specific examples of concern from Virginia, along with recommendations to improve implementation of ESSA.

Revise the Implementation Timeline

ESSA authorizes the Secretary of Education to provide for the orderly transition to, and implementation of, programs authorized under the *Elementary and Secondary Education Act* (ESEA), as amended by ESSA. Sections 1111(c) and 1111(d)—“Statewide Accountability System” and “School Support and Improvement Activities”—take effect beginning with school year 2017-2018.

The proposed regulations require states to use 2016-2017 data to identify schools for comprehensive and targeted support and improvement in 2017-2018. This accelerated timeline does not provide sufficient opportunity for states to incorporate stakeholder input into the development of meaningfully differentiated systems. In order to identify schools using 2016-2017 data, states will be forced to limit indicator options to include data that they already collect, including data on the school quality or student success indicator. The proposed timeline in essence encourages states to continue with accountability systems that mirror those currently being implemented.

Virginia recommends that the regulation be revised such that states will identify schools for comprehensive and targeted support and improvement using 2017-2018 data. This more reasonable timeline will provide states with sufficient time to collect and analyze new data elements that may be included in state systems. If the current timeline is not revised, and states are required to identify schools for comprehensive and targeted support during the summer of 2017, Virginia recommends that states be granted the option to use 2017-2018 as a statewide school improvement planning year. This option, though not ideal, will allow states sufficient time to solidly establish improvement systems to support identified schools.

Remove the Single, Summative Performance Rating Requirement

ESSA requires states to develop accountability systems that include several measures of academic achievement, as well as an indicator of school quality or student success. A system of meaningful differentiation that is based on all indicators, for all students and each subgroup, must be clearly defined in the state plan.

The proposed regulations prescribe that the state system must include at least three distinct levels of school performance for each indicator and a single, summative rating from at least three distinct rating categories, to describe each school. These inflexible structures extend beyond ESSA requirements and limit states’ ability to develop plans that reflect their visions. This requirement also perpetuates the “failing school” mindset of NCLB and is

counterproductive for states like Virginia that are moving away from that model. The summative rating requirement in particular conflicts with Virginia's focus on continuous improvement for all schools.

Virginia asserts that language in the regulations should enable states to develop systems for meaningful differentiation including dashboards or other indices; the single, summative rating requirement should be removed.

Align Allocations for Identified Schools with Needs Assessment Results Approach

ESSA does not impose guidelines regarding the amount of funds that should be awarded to support schools identified for comprehensive or targeted support and improvement.

The proposed regulations prescribe a minimum award of \$500,000 per year for each school identified for comprehensive support and a minimum award of \$50,000 for each school identified for targeted support, unless LEA funding applications demonstrate that less funding is needed. Virginia asserts that awards to support identified schools should be based upon the results of each school's needs assessment, with consideration given to the resources available in the LEA in which the school is located, and not upon minimum thresholds established in regulations. It is fiscally irresponsible to establish a minimum amount of funding for schools across the nation based solely upon a school's designation of comprehensive or targeted support. Underfunding schools could result in slower growth, while overfunding schools could result in inappropriate and unnecessary spending. Virginia recommends that this rule be removed from the regulations. Instead, states should determine awards based on the results of school needs assessments.

Remove Requirements to Define and Report on "Ineffective" Teachers

Under ESSA, state plans must include a description of how low-income and minority children enrolled in schools receiving Title I, Part A, funds are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. State plans must also include a description of how the state will publically report on this information, "except that nothing in this subparagraph shall be construed as requiring a State to develop or implement a teacher, principal, or other school leader evaluation system." (Section 1111(g)(1)(B))

The proposed regulations require each state to develop a statewide definition of "ineffective teacher" that differentiates between categories of teachers. Each state must annually calculate and report, based on student level data, the rate at which low-income students in schools receiving Title I, Part A, funds are taught by ineffective teachers, and the rate at which non-low-income students in schools not receiving Title I, Part A, funds are taught by ineffective teachers. States must also annually calculate and report rates at which low-income students enrolled in schools receiving Title I, Part A, funds are taught by out-of-field teachers and inexperienced teachers, as well as the rates at which non-low-income students enrolled in schools not receiving Title I, Part A, funds are taught by out-of-field teachers and inexperienced teachers.

This proposed rule is problematic and not supported by ESSA. Defining and gathering data on “ineffective teachers” inherently requires each state to develop and implement a teacher evaluation system to include an indicator for effectiveness, which is expressly prohibited in ESSA. Requiring that these data be reported based on student level low-income data presents a risk that reported data may be identifiable. Also, in states like Virginia where evaluation data are protected by law, reporting information based on these data is prohibited. Virginia recommends that the requirement to define and report on ineffective teachers and the requirement to report rates for out-of-field and inexperienced teachers based on student level low-income data in Title I, Part A, schools, be removed from the regulations.

Adjust High School Graduation Rate Cohort Definition and Calculations

ESSA requires that states calculate graduation rates using the four-year cohort rate, and, at states’ discretion, extended-year rates. High schools with graduation rates below 67 percent must be identified for comprehensive support and improvement.

The proposed rules require states to identify schools that have graduation rates below 67 percent based on the four-year cohort rate for comprehensive support and improvement. The rules also include students who obtain alternate diplomas after extended time in school in the original four year cohort to which the students are assigned.

Virginia recommends that students who obtain alternate diplomas after extended time in school be included in the four-year cohort graduation year in which the students obtain their diplomas. This adjustment will ease the burden of recalculating the four-year rate in subsequent years and encourage schools to continue to support students to graduate. For the purposes of identifying schools for comprehensive support and improvement, Virginia recommends that both the four-year and extended-year rates should be permitted. This approach would positively impact schools that successfully provide supports to students that need additional time to meet graduation requirements.

Provide Extended Time to Meet Per-pupil Expenditure Reporting Requirements

ESSA requires that per-pupil expenditures for each LEA and school be reported on the school report card. The proposed regulations provide clarification on this requirement, and also permit states to request a one-year extension for this reporting requirement.

Virginia suggests that states should be permitted to request an additional extension for this reporting requirement. As in many other states, Virginia’s recordkeeping system is not equipped to report per-pupil expenditure data in this manner. Structural changes at the state and local level will have to be made in order to comply. Changes will be costly and time-consuming. Virginia recommends that the state, LEAs, and schools focus on operationalizing the new ESSA accountability measures in the first years of implementing the new law and subsequently make the changes needed to comply with this reporting requirement.

Ms. Meredith Miller
July 27, 2016
Page Five

In closing, Virginia urges USED to remove from the proposed regulations rules that extend beyond the intent, and in some cases beyond the expressly-written limitations, of ESSA. Each state should be afforded the flexibility and time granted under the new law to develop a plan that complies with the law and aligns with the state's vision for accountability and improvement. The prescriptive rules outlined above, if not removed from the final regulations, will place burdens and constraints on states that will impede progress instead of accelerating success.

Thank you for your consideration of these recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "S.R. Staples", with a long horizontal line extending to the right.

Steven R. Staples, Ed.D.
Superintendent of Public Instruction

SRS/SLR/lis